

FIRST REGULAR SESSION

HOUSE BILL NO. 353

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES LUETKEMEYER AND PARKER (Co-sponsors).

Read 1st time February 3, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1445L.011

AN ACT

To repeal sections 375.772, 375.773, 375.775, 375.776, 375.778 and 375.779, RSMo, and to enact in lieu thereof six new sections relating to property and casualty insurance guaranty associations.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 375.772, 375.773, 375.775, 375.776, 375.778 and 375.779, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 375.772, 375.773, 375.775, 375.776, 375.778 and 375.779, to read as follows:

375.772. 1. There is created a nonprofit unincorporated legal entity to be known as the "Missouri Property and Casualty Insurance Guaranty Association", hereinafter referred to as "association". All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation and through a board of directors established by section 375.776.

2. As used in sections 375.771 to 375.779, the following terms mean:

(1) "Account", any one of the four accounts established by section 375.773;

(2) "Affiliate", a person who directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person;

(3) "Affiliate of an insolvent insurer", a person who directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with an insolvent insurer on December thirty-first of the year next preceding the date the insurer becomes an insolvent insurer;

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is new proposed language.

15 (4) "Association", the Missouri property and casualty insurance guaranty
16 association;

17 (5) "Claimant", any insured making a first-party claim or any person instituting
18 a liability claim, provided that no person who is an affiliate of the insolvent insurer may
19 be a claimant;

20 (6) "Control", the possession, direct or indirect, of the power to direct or cause the
21 direction of the management and policies of a person, whether through the ownership of
22 voting securities, by contract other than a commercial contract for goods or
23 nonmanagement services, or otherwise, unless the power is the result of an official position
24 with the corporate office held by the person. Control shall be presumed to exist if any
25 person, directly or indirectly, owns, controls, holds the power to vote, or holds proxies
26 representing ten percent or more of the voting securities of any other person. Such
27 presumption may be rebutted by a showing that control does not exist in fact;

28 (7) "Covered claim", an unpaid claim including those for unearned premiums, presented
29 by a claimant within the time specified in accordance with subsection 1 and subdivision (2)
30 of subsection 2 of section [375.670, and which arises] 375.775, and is for a loss arising out of
31 and is within the coverage of an insurance policy to which sections 375.771 to 375.779 apply
32 [issued by a member insurer, if such insurer becomes an insolvent insurer after September 28,
33 1971,] made by a person insured under such policy or by a person suffering injury or for
34 which a person insured under such policy is legally liable, if:

35 (a) The policy is issued by an insurer and such insurer becomes an insolvent insurer
36 after August 28, 2003; and

37 (b) The claimant or insured is a resident of this state at the time of the insured event[;],
38 or the claim is a first-party claim by an insured for damage to property and the property
39 from which the claim arises is permanently located in this state[.] or in the case of an unearned
40 premium, the policyholder is a resident of this state at the time the policy was issued. The
41 residency of the claimant, insured, or policyholder, other than an individual, is the state
42 in which its principal place of business is located at the time of the insured event;

43 (c) "Covered claim" shall not include:

44 a. Any amount awarded as punitive or exemplary damages, or which is a fine or
45 penalty;

46 b. Any amount sought as a return of premium under any retrospective rating plan[.]; or

47 c. Any amount due any reinsurer, insurer, insurance pool, or underwriting association,
48 health maintenance organization, hospital plan corporation, health services corporation,
49 or self-insurer as subrogation recoveries, reinsurance recoveries, contribution, indemnity,
50 or otherwise[, and]. To the extent of any amount due any reinsurer, insurer, insurance pool, or

51 underwriting association, **health maintenance organization, hospital plan corporation, health**
52 **services corporation, or self-insurer** as subrogation recoveries or otherwise there shall be no
53 right of recovery by any person against a tortfeasor insured of an insolvent insurer, except that
54 such limitation shall not apply with respect to those amounts that exceed the limits of the policy
55 issued such tortfeasor by the insolvent insurer[. "Covered claim" shall not include];

56 **d. A claim by or against an insured of an insolvent insurer, if such insured has a net**
57 **worth of more than twenty-five million dollars on the [date the insurer became an insolvent**
58 **insurer] later of the end of the insured's most recent fiscal year or the December thirty-first**
59 **of the year next preceding the date the insurer becomes an insolvent insurer; provided that**
60 **an insured's net worth on such date shall be deemed to include the aggregate net worth of**
61 **the insured and all of its affiliates as calculated on a consolidated basis;**

62 **e. Any first-party claim by an insured which is an affiliate of the insolvent insurer;**

63 **f. Supplementary payment obligations incurred prior to the final order of**
64 **liquidation, including but not limited to adjustment fees and expenses, fees for medical cost**
65 **containment services, including but not limited to medical case management fees,**
66 **attorney's fees and expenses, court costs, penalties, and bond premiums;**

67 **g. Any claims for interest;**

68 **h. Any amount that constitutes a portion of a covered claim that is within an**
69 **insured's deductible or self-insured retention;**

70 **i. Any fee or other amount sought by or on behalf of an attorney or other provider**
71 **of goods or services retained by an insured or claimant in connection with the assertion or**
72 **prosecuting of any claim, covered or otherwise, against the association;**

73 **j. Any amount that constitutes a claim under a policy issued by an insolvent insurer**
74 **with a deductible or self-insured retention of three hundred thousand dollars or more.**
75 **However, such a claim shall be considered a covered claim, if, as of the deadline set forth**
76 **for the filing of claims against the insolvent insurer or its liquidator, the insured is a debtor**
77 **under 11 U.S.C. Section 701, et seq.;**

78 **k. Any amount to the extent that it is covered by any insurance that is available to**
79 **the claimant or the insured, whether such other insurance is primary, pro rata, or excess.**
80 **In all such instances, the association's obligations to the insured or claimant shall not be**
81 **deemed to be other insurance;**

82 [(3)] (8) "Insolvent insurer", an insurer licensed to transact insurance in this state, either
83 at the time the policy was issued or when the insured event occurred, and against whom [an] a
84 **final** order of liquidation with a finding of insolvency has been entered by a court of competent
85 jurisdiction in the insurer's state of domicile or of this state under the provisions of sections
86 375.950 to 375.990, and which **such** order of liquidation has not been stayed or been the subject

87 of a writ of supersedeas or other comparable order;

88 **(9) "Insured", any named insured, additional insured, vendor, lessor, or any other**
89 **party identified as an insured under the policy;**

90 [(4)] **(10)** "Member insurer", any person who writes any kind of insurance to which
91 sections 375.771 to 375.779 apply, including the exchange of reciprocal or interinsurance
92 contracts, and possesses a certificate of authority to transact the business of insurance in this state
93 issued by the director of the department of insurance [except an insurer which was insolvent on
94 September 28, 1971]. Whether or not approved by the director of the department of insurance
95 for the placing of lines of insurance by [brokers] **producers** so authorized under the provisions
96 of chapter 384, RSMo, an insurance company not licensed to do business in this state shall not
97 be a member insurer. Missouri mutual and extended Missouri mutual insurance companies
98 doing business under chapter 380, RSMo, shall be considered member insurers for the purposes
99 of sections 375.771 to 375.779, and a special account shall be established applicable only to such
100 companies;

101 [(5)] **(11)** "Net direct written premiums", direct gross premiums written in this state on
102 insurance policies to which sections 375.771 to 375.779 apply, less return premiums thereon and
103 dividends paid or credited to policyholders on such direct business. "Net direct written
104 premiums" does not include premiums on contracts between insurers or reinsurers;

105 [(6)] **(12)** "Net worth", the total assets of a person less the total liabilities against those
106 assets. Where the person is one who prepares an annual report to shareholders such report for
107 the fiscal year immediately preceding the date of insolvency of the insurance carrier shall be used
108 to determine net worth. If the person is one who does not prepare such an annual report, but does
109 prepare an annual financial report for management which reflects net worth, then such report for
110 the fiscal year immediately preceding the date of insolvency of the insurance carrier shall be used
111 to determine net worth;

112 **(13) "Ocean marine insurance", includes marine insurance that insures against**
113 **maritime perils or risks and other related perils or risks which are usually insured against**
114 **by traditional marine insurance, such as hull and machinery, marine builders' risks, and**
115 **marine protection and indemnity. Such perils and risks insured against include, without**
116 **limitation, loss, damage, or expense or legal liability of the insured arising out of an**
117 **incident related to ownership, operation, chartering, maintenance, use, repair, or**
118 **construction of any vessel, craft, or instrumentality in use in ocean or inland waters for**
119 **commercial purposes, including liability of the insured for personal injury, illness, or death**
120 **for loss or damage to the property of the insured or another person;**

121 [(7)] **(14)** "Person", any individual, corporation, partnership, association or voluntary
122 organization, **municipality, or government;**

123 **(15) "Self-insurer", a person that covers its liability through a qualified individual**
124 **or group self-insurance program or any other formal program created for the specific**
125 **purpose of covering liabilities typically covered by insurance.**

 375.773. 1. For purposes of administration and assessment, the association shall be
2 divided into four separate accounts:

- 3 (1) The workers' compensation insurance account;
- 4 (2) The automobile insurance account;
- 5 (3) The Missouri mutual and extended Missouri mutual insurance company account; and
- 6 (4) The account for all other insurance to which sections 375.771 to 375.779 apply.

7 2. Sections 375.771 to 375.779 shall apply to all kinds of direct insurance[, except life,
8 accident and sickness, title, surety, disability, credit, mortgage guaranty, ocean marine insurance,
9 and assessment insurance written under the provisions of chapter 383, RSMo], **but shall not be**
10 **applicable to the following:**

- 11 **(1) Life, annuity, accident, and health or disability insurance;**
- 12 **(2) Mortgage guaranty, financial guaranty, or other forms of insurance offering**
13 **protection against investment risk;**
- 14 **(3) Fidelity or surety bonds, or any other bonding obligations;**
- 15 **(4) Credit insurance, vendors' single-interest insurance, or collateral protection**
16 **insurance, or any similar insurance protecting the interest of a creditor arising out of a**
17 **creditor-debtor transaction;**
- 18 **(5) Insurance of warranties or service contracts, including insurance that provides**
19 **for the repair, replacement, or service of goods or property, or indemnification for repair,**
20 **replacement, or service for the operational or structural failure of the goods or property**
21 **due to a defect in material, workmanship, or normal wear and tear, or provides**
22 **reimbursement for the liability incurred by the issuers of agreements or service contracts**
23 **that provide such benefits;**
- 24 **(6) Title insurance;**
- 25 **(7) Ocean marine insurance;**
- 26 **(8) Any transaction or combination of transactions between a person, including**
27 **affiliates of such person, and an insurer, including affiliates of such insurer, which involves**
28 **the transfer of investment or credit risk unaccompanied by the transfer of insurance risk;**
29 **or**
- 30 **(9) Any insurance provided or guaranteed by any government.**

 375.775. 1. The association shall[:

- 2 (1)] Be obligated to the extent of the covered claims existing prior to the date of a final
3 order of liquidation or a judicial determination by a court of competent jurisdiction in the

4 insurer's domiciliary state that an insolvent insurer exists and arising within thirty days from the
5 date or at the time of the first such order or determination, or before the policy expiration date
6 if less than thirty days after such date, or before or at the time the insured replaces the policy or
7 causes its cancellation, if he does so within thirty days of such date[, but obligation shall include
8 only that amount of each covered claim which is in excess of one hundred dollars and is less than
9 three hundred thousand dollars, except that the association shall pay the full amount of any
10 covered claim arising out of a workers' compensation policy]. **Such obligation shall be**
11 **satisfied by paying to the claimant an amount as follows:**

12 **(1) The full amount of a covered claim for benefits under workers' compensation**
13 **insurance coverage;**

14 **(2) An amount not exceeding ten thousand dollars per policy for a covered claim**
15 **for the return of unearned premium;**

16 **(3) An amount not exceeding three hundred thousand dollars per claim for all other**
17 **covered claims.**

18 **2.** In no event shall the association be obligated to an insured or claimant in an amount
19 in excess of the face amount or the limits of the policy from which a claim arises or be obligated
20 for the payment of unearned premium in excess of the amount of ten thousand dollars, or to an
21 insured or claimant on any covered claim until it receives confirmation from the receiver or
22 liquidator of an insolvent insurer that the claim is within the coverage of an applicable policy of
23 the insolvent insurer, except that within the sole discretion of the association, if the association
24 deems it has sufficient evidence from other sources, including any claim forms which may be
25 propounded by the association, that the claim is within the coverage of an applicable policy of
26 the insolvent insurer, it shall proceed to process the claim, pursuant to its statutory obligations,
27 without such confirmation by the receiver or liquidator:

28 [(a)] **(1)** All covered claims shall be filed with the association on the claim information
29 form required by this paragraph no later than the final date first set by the court for the filing of
30 claims against the liquidator or receiver of an insolvent insurer, except that if the time first set
31 by the court for filing claims is one year or less from the date of insolvency, and an extension of
32 the time to file claims is granted by the court, claims may be filed with the association no later
33 than the new date set by the court or within one year of the date of insolvency, whichever first
34 occurs. In no event shall the association be obligated on a claim filed after such date or on one
35 not filed on the required form. A claim information form shall consist of a statement verified
36 under oath by the claimant which includes all of the following:

37 [a.] **(a)** The particulars of the claim;

38 [b.] **(b)** A statement that the sum claimed is justly owing and that there is no setoff,
39 counterclaim, or defense to said claim;

40 [c.] (c) The name and address of the claimant and the attorney who represents the
41 claimant, if any; and

42 [d.] (d) If the claimant is an insured, that the insured's net worth did not exceed
43 twenty-five million dollars on the date the insurer became an insolvent insurer.

44

45 The association may require that a prescribed form be used and may require that other
46 information and documents be included. A covered claim shall not include any claim not
47 described in a timely filed claim information form even though the existence of the claim was
48 not known to the claimant at the time a claim information form was filed;

49 [(b)] (2) In the case of claims arising from a member insurer subject to a final order of
50 liquidation issued on or after September 1, 2000, the provisions of [paragraph (a) of subdivision
51 (1) of subsection 1] **subdivision (1) of subsection 2** of this section shall not apply and in lieu
52 thereof, such claims shall be governed by this [paragraph] **subdivision**. [All covered claims shall
53 be filed with the association, liquidator or receiver no later than the final date first set by the
54 court for the filing of claims against the liquidator or receiver of an insolvent insurer, except that
55 if the time first set by the court for filing claims is one year or less from the date of the
56 insolvency, and an extension of the time to file claims is granted by the court, claims may be
57 filed no later than the new date set by the court or within one year of the date of insolvency,
58 whichever first occurs.] **Notwithstanding any other provisions of sections 375.771 to 375.779,**
59 **a covered claim shall not include a claim filed with the association after the earlier of**
60 **eighteen months after the date of the order of liquidation, or the final date set by the court**
61 **for the filing of claims against the liquidator or receiver of an insolvent insurer.** The
62 association may require that the prescribed forms be used and may require that other information
63 and documents be included in confirming the existence of a covered claim or in determining
64 eligibility of any claimant. Such information may include, but is not limited to:

65 [a.] (a) The particulars of the claim;

66 [b.] (b) A statement that the sum claimed is justly owing and that there is not setoff,
67 counterclaim, or defense to said claim;

68 [c.] (c) The name and address of the claimant and the attorney who represents the
69 claimant, if any; and

70 [d.] (d) A verification under oath of such requested information.

71

72 In no event shall the association be obligated on a claim filed with the association, liquidator or
73 receiver for protection afforded under the insured's policy for incurred but not reported losses.
74 A covered claim shall not include any claim that is not filed prior to the final date for filing
75 claims, even though the existence of the claims was not known to the claimant prior to such final

76 date;

77 [(c)] **3.** In the case of claims arising from bodily injury, sickness or disease, the amount
78 of any such award shall not exceed the claimant's reasonable expenses incurred for necessary
79 medical, surgical, X-ray, dental services and comparable services for individuals who, in the
80 exercise of their constitutional rights, rely on spiritual means alone for healing in accordance
81 with the tenets and practices of a recognized church or religious denomination by a duly
82 accredited practitioner thereof, including prosthetic devices and necessary ambulance, hospital,
83 professional nursing, and any amounts lost or to be lost by reason of claimant's inability to work
84 and earn wages or salary or their equivalent, except that the association shall pay the full amount
85 of any covered claim arising out of a workers' compensation policy. Such award may also
86 include payments in fact made to others, not members of claimant's household, which were
87 reasonably incurred to obtain from such other persons ordinary and necessary services for the
88 production of income in lieu of those services the claimant would have performed for himself
89 had he not been injured. Verdicts as respect only those civil actions as may be brought to recover
90 damages as provided in this section shall specifically set out the sums applicable to each item
91 in this section for which an award may be made[;].

92 **4. In the case of claims arising from a member insurer subject to a final order of**
93 **liquidation dated on or after August 31, 2003, the provisions of subsection 3 of this section**
94 **shall not apply.**

95 **5. Notwithstanding any other provision of sections 375.771 to 375.779, except in the**
96 **case of a claim for benefits under workers' compensation coverage, any obligation of the**
97 **association to or on behalf of the insured and its affiliates on covered claims shall cease**
98 **when ten million dollars has been paid in the aggregate by the association and any one or**
99 **more associations similar to the association in any other state or states to or on behalf of**
100 **such insured, its affiliates, and additional insureds on covered claims or allowed claims**
101 **arising under the policy or policies of any one insolvent insurer.**

102 **6. If the association determines that there may be more than one claimant having**
103 **a covered claim or allowed claim against the association, or any associations similar to the**
104 **association in other states, under the policy or policies of any one solvent insurer, the**
105 **association may establish a plan to allocate amounts payable by the association in such**
106 **manner as the association in its discretion deems equitable.**

107 [(2)] **7. The association shall be deemed the insurer only to the extent of its obligations**
108 **on the covered claims and to such extent, subject to the limitations provided in sections**
109 **375.771 to 375.779, shall have all rights, duties, and obligations of the insolvent insurer as if the**
110 **insurer had not become insolvent[;], including but not limited to the right to pursue and**
111 **retain salvage and subrogation recoverable on paid covered claim obligations. The**

112 **association shall not be deemed the insolvent insurer for any purpose relating to the issue**
113 **of whether the association is amenable to the personal jurisdiction of the courts of any**
114 **states. However, any obligation to defend an insured shall cease upon:**

115 **(1) The association's payment by settlement releasing the insured or on a judgment**
116 **of an amount equal to the lesser of the association's covered claim obligation limit or the**
117 **applicable policy limit; or**

118 **(2) The association's tender of such amount.**

119 **[(3)] 8. The association shall** allocate claims paid and expenses incurred among the four
120 accounts separately, and assess member insurers separately for each account amounts necessary
121 to pay the obligations of the association under [subdivision (1) of this] subsection **1 of this**
122 **section** to an insolvency, the expenses of handling covered claims subsequent to an insolvency,
123 the cost of examinations under subdivision [(6) of this subsection] **(3) of subsection 9 of this**
124 **section**, and other expenses authorized by sections 375.771 to 375.779. The assessments of each
125 member insurer shall be in the proportion that the net direct written premiums of the member
126 insurer for the preceding calendar year on the kinds of insurance in the account bears to the net
127 direct written premiums of all member insurers for the preceding calendar year of the kinds of
128 insurance in the account. **Each member's insurer's assessment may be rounded to the**
129 **nearest ten dollars.** Each member insurer shall be notified of the assessment not later than
130 thirty days before it is due. No member insurer may be assessed in any year on any account an
131 amount greater than [one] **two** percent of that member insurer's net direct written premiums for
132 the preceding calendar year on the kinds of insurance in the account. If the maximum
133 assessment, together with the other assets of the association in any account, does not provide in
134 any one year in any account an amount sufficient to make all necessary payments from that
135 account, the funds available shall be prorated and the unpaid portion shall be paid as soon
136 thereafter as funds become available. The association may defer, in whole or in part, the
137 assessment of any member insurer, if the assessment would cause the member insurer's financial
138 statement to reflect amounts of capital or surplus less than the minimum amounts required for
139 a certificate of authority by any jurisdiction in which the member insurer is authorized to transact
140 insurance. Deferred assessments shall be paid when such payment will not reduce capital or
141 surplus below required minimums. Such payments shall be refunded to those companies
142 receiving larger assessments by virtue of such deferment, or, in the discretion of any such
143 company, credited against future assessments. No dividends shall be paid stockholders or
144 policyholders of a member insurer so long as all or part of any assessment against such insurer
145 remains deferred. Each member insurer may set off against any assessment, authorized payments
146 made on covered claims and expenses incurred in the payment of such claims by the member
147 insurer if they are chargeable to the account for which the assessment is made. Assessments

148 made under sections 375.771 to 375.779 and section 375.916 shall not be subject to subsection
149 1 of section 375.916;

150 **[(4)] 9. The association shall:**

151 **(1)** Handle claims through its employees or through one or more insurers or other
152 persons designated as servicing facilities. Designation of a servicing facility is subject to the
153 approval of the director, but such designation may be declined by a member insurer;

154 **[(5)] (2)** Reimburse each servicing facility for obligations of the association paid by the
155 facility and for actual expenses incurred by the facility while handling claims on behalf of the
156 association and shall pay the other expenses of the association authorized by this section;

157 **[(6)] (3)** Be subject to examination and regulation by the director. The board of directors
158 shall submit, not later than March thirtieth of each year, a financial report for the preceding
159 calendar year in a form approved by the director; and

160 **[(7)]** Be considered to have been designated commissioner pursuant to subsection 2 of
161 section 375.670, and it shall proceed to investigate, hear, settle, and determine covered claims
162 unless the claimant shall, within thirty days from the date the claim is presented, present a written
163 demand that such claim be processed in the liquidation proceedings as a claim not covered by
164 sections 375.771 to 375.779] **(4) Proceed to investigate, settle, and determine covered claims.**

165 **[2.] 10.** The association may:

166 **(1)** Appear in, defend and appeal any action on a claim brought against the association;

167 **(2)** Employ or retain such persons as are necessary to handle claims and perform other
168 duties of the association;

169 **(3) Act as a servicing facility for other similar entities created by similar laws in this**
170 **state or other states;**

171 **(4)** Borrow funds necessary to effect the purposes of sections 375.771 to 375.779 in
172 accord with the plan of operation;

173 **[(4)] (5)** Sue or be sued. **Such power to sue includes the power and right to intervene**
174 **as a party before any court in this state that has jurisdiction over an insolvent insurer as**
175 **defined in section 375.772;**

176 **[(5)] (6)** Negotiate and become a party to such contracts as are necessary to carry out the
177 purpose of sections 375.771 to 375.779;

178 **[(6)] (7)** Perform such other acts as are necessary or proper to effectuate the purpose of
179 sections 375.771 to 375.779;

180 **[(7)] (8)** Refund to the member insurers in proportion to the contribution of each member
181 insurer to that account that amount by which the assets of the account exceed the liabilities, if,
182 at the end of any calendar year, the board of directors finds that the assets of the association in
183 any account exceed the liabilities of that account as estimated by the board of directors for the

184 coming year; and

185 ~~[(8)]~~ **(9)** Become a member of the National ~~[Committee]~~ **Conference** on Insurance
186 Guaranty Funds.

375.776. 1. The board of directors, subject to the supervision of the director, shall:

2 (1) Establish a plan of operation whereby the duties of the association under section
3 375.775 will be performed;

4 (2) Establish procedures for handling assets of the association;

5 (3) Establish regular places and times for meetings of the board of directors;

6 (4) Establish procedures for records to be kept of all financial transactions of the
7 association, its agents, and the board of directors;

8 (5) Provide that any member insurer aggrieved by any final action or decision of the
9 association may appeal to the director within thirty days after the action or decision;

10 (6) Establish the procedures whereby selections for the board of directors will be
11 submitted to the director; and

12 (7) Have and exercise such additional powers necessary or proper for the execution of
13 the powers and duties of the association.

14 2. The plan of operation may provide that any or all powers and duties of the association,
15 except those under [subdivision (3) of subsection 1 and subdivision (3) of subsection 2]
16 **subsection 8 and subdivision (4) of subsection 10** of section 375.775, are delegated to a
17 corporation, association, or organization which performs or will perform functions similar to
18 those of this association, or its equivalent, in two or more states. Such a corporation, association
19 or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid
20 for its performance of any other functions of the association. A delegation under this section
21 shall take effect only with the approval of both the board of directors and the director, and may
22 be made only to a corporation, association, or organization which extends protection not
23 substantially less favorable and effective than that provided by sections 375.771 to 375.779.

24 3. The board of directors of the association shall consist of seven persons serving terms
25 as established in the plan of operation. The members of the board shall be selected by member
26 insurers subject to the approval of the director. Not less than four of the members shall represent
27 domestic insurers. Vacancies on the board shall be filled for the remaining period of the term
28 by appointment of the director. If no members are selected within sixty days, the director shall
29 appoint the initial members of the board of directors.

30 4. Members of the board shall receive no remuneration.

31 5. To aid in the detection and prevention of insurer insolvencies:

32 (1) It shall be the duty of the board of directors, upon majority vote, to notify the director
33 of any information indicating any member insurer may be insolvent or in a financial condition

34 hazardous to the policyholders or the public;

35 (2) The board of directors may, upon majority vote, make reports and recommendations
36 to the director upon any matter germane to the solvency, liquidation, rehabilitation or
37 conservation of any member insurer. Such reports and recommendations shall not be considered
38 public documents; and

39 (3) The board of directors shall, at the conclusion of any insurer insolvency in which the
40 association was obligated to pay covered claims, prepare a report on the history and causes of
41 such insolvency, based on the information available to the association, and submit such report
42 to the director.

375.778. 1. Any person having a claim against [his] **an insurer, regardless of whether**
2 **such insurer is a member insurer**, under any provision in [his] **an insurance policy, other than**
3 **the policy of the insolvent insurer, which arises out of the same facts, injury, or loss that**
4 **gave rise to the covered claim against the association and** which is also a covered claim shall
5 [first] be required to **first** exhaust his **or her** right under such policy[. Any amount payable on
6 a covered claim under sections 375.771 to 375.779 shall be reduced by the amount of such
7 recovery under the claimant's insurance policy] **or policies of insurance. Such other policies**
8 **of insurance shall include, but not be limited to, liability coverage, health and accident**
9 **insurance, hospitalization and other medical expense coverage, health care coverage by a**
10 **health maintenance organization or health services corporation, or any amount payable**
11 **by or on behalf of a self-insured plan, workers' compensation benefits, disability insurance,**
12 **uninsured motorist coverage, and underinsured motorist coverage. The association's**
13 **obligation pursuant to subsection 1 of section 375.775 shall be reduced by the amount**
14 **recovered or recoverable, whichever is greater under any such other insurance policy or**
15 **policies. To the extent the association's obligation pursuant to subsection 1 of section**
16 **375.775 is reduced by the application of the section, the liability of the person insured by**
17 **the insolvent insurer's policy for the claim shall be reduced in the same amount.**

18 2. Any person having a claim which may be recovered under more than one insurance
19 guaranty association or its equivalent shall first seek recovery from the association of the place
20 of residence of the insured except that if it is a first party claim for damage to property with a
21 permanent location, from the association of the location of the property, and if it is a workers'
22 compensation claim, from the association of the residence of the claimant. Any recovery under
23 sections 375.771 to 375.779 shall be reduced by the amount of the recovery from any other
24 insurance guaranty association or its equivalent.

25 3. **Any person having a claim or legal right of recovery against any governmental**
26 **insurance or guaranty program that is also a covered claim shall be required to exhaust**
27 **first such rights under that program. Any amount payable on a covered claim by the**

28 **association shall be reduced by the amount of recovery under the program.**

29 **4. The association shall have no duty to provide a separate defense at its cost to an**
30 **insured of an insolvent insurer as to any issue arising out of the coverage of this section.**

31 **5. (1)** Any person recovering under sections 375.771 to 375.779 shall be deemed to have
32 assigned his **or her** rights under the policy to the association to the extent of his **or her** recovery
33 from the association. Every insured or claimant seeking the protection of sections 375.771 to
34 375.779 shall cooperate with the association to the same extent as such person would have been
35 required to cooperate with the insolvent insurer.

36 (2) [Any person eligible to recover a covered claim under sections 375.771 to 375.779
37 shall have the right to assign such rights of recovery to the agent of the insolvent member insurer.

38 (3)] The association shall periodically file with the receiver or liquidator of the insolvent
39 insurer statements of the covered claims paid by the association and estimates of anticipated
40 claims on the association which shall preserve the rights of the association against the assets of
41 the insolvent insurer.

42 [4. All proceedings in which the insolvent insurer is a party or is obligated to defend a
43 party in any court in this state shall be stayed for sixty days from the date the insolvency is
44 determined. In addition, the association, upon application to any court in which the insolvent
45 insurer is a party or is obligated to defend a party and upon showing that the association first
46 received notice from the insured or claimant of such claim or lawsuit not more than twenty days
47 prior to making the application, shall be granted a continuance of not less than sixty days from
48 any trial setting.]

49 **6. All proceedings in which the insolvent insurer is a party or is obligated to defend**
50 **a party in any court of this state shall, subject to waiver by the association in specific cases**
51 **involving covered claims, be stayed until the last day fixed by the court for the filing of**
52 **claims and such additional time thereafter as may be determined by the court from the**
53 **date the insolvency is determined or an ancillary proceeding is instituted in the state,**
54 **whichever is later, to permit proper defense by the association of all pending causes of**
55 **action.**

56 **7. As to any covered claims arising from a judgment under any decision, verdict or**
57 **finding based on the default of the insolvent insurer or its failure to defend an insured, the**
58 **association, either on its own behalf or on behalf of such insured, may apply to have such**
59 **judgment, order, decision, verdict or finding set aside by the same court or administrator that**
60 **made such judgment, order, decision, verdict or finding and shall be permitted to defend against**
61 **such claim on the merits, even if the time otherwise provided by law for setting aside a**
62 **default judgment has expired.**

63 [5.] **8. With respect to a subrogation claim arising out of payment for property damage**

64 caused by a tortfeasor insured by an insolvent insurer, the insurer making such payment shall not
65 be entitled to any right of recovery against such tortfeasor in excess of the proceeds recovered
66 from the assets of the insolvent insurer of such tortfeasor; provided that, such limitation shall not
67 apply with respect to property damage in excess of the limits of liability of the policy issued such
68 tortfeasor by the insolvent insurer.

69 [6.] 9. The liquidator, receiver, or statutory receiver of an insolvent member insurer
70 covered by sections 375.771 to 375.779 shall permit access by the board of directors of the
71 association or its authorized representative to such of the insolvent insurer's records which are
72 necessary for the board in carrying out its functions under sections 375.771 to 375.779 with
73 regard to covered claims. In addition, the liquidator, receiver, or statutory receiver shall provide
74 the board or its representatives with copies of such records upon the request by the board and at
75 the expense of the board.

375.779. 1. There shall be no liability on the part of and no cause of action of any nature
2 shall arise against any member insurer, the association or its agents [or], employees, **or any**
3 **servicing agent acting at the direction of the association**, the board of directors **or any person**
4 **serving as a representative of any director**, or the director **of the department of insurance**
5 or [his] **the director's** representatives for any action taken by them in the performance of their
6 powers and duties under sections 375.771 to 375.779.

7 2. It is an unfair trade practice for any insurer or agent to make use in any manner of the
8 protection given policyholders by sections 375.771 to 375.779 as a reason for buying insurance
9 from [him] **such insurer or agent**. If a policy exceeds the limitations of coverage under sections
10 375.771 to 375.779, the insurer shall prominently inscribe on an endorsement to the insurance
11 contract the limitations of coverage provided by the guaranty association.